

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JAMES JORDAN, SHARON JORDAN,  
BOBBY HUGHES (Personal Representative of  
the Estate of MIRIAM HUGHES), BILLY  
KARR, SHANNON DAY, CINDY DAY,  
PATRICIA ALBRECHT RHODES (Personal  
Representative of the Estate of REX RHODES)  
and BRUCE WEHLING (Personal  
Representative of the Estate of LEONARD  
WEHLING, JR.),

Plaintiffs,

v.

C.A. No. 20-1209-CFC-JLH

TEVA PHARMACEUTICALS USA, INC., and  
DOES 1-50, Inclusive,

Defendants.

**MEMORANDUM ORDER**

At Wilmington this 29th day of June, 2021:

WHEREAS, Defendant Teva Pharmaceuticals USA, Inc.'s Motion to Dismiss Plaintiffs' Complaint for Failure to State a Claim (D.I. 7) is currently pending before the Court;

WHEREAS, the parties agree that the "allegations and claims in this action are substantively identical to the allegations and claims that were dismissed with prejudice" in *Bennett v. Teva Pharmaceuticals USA, Inc.*, No. 19-2126-CFC, 2021 WL 797834 (D. Del. Mar. 2, 2021), (*see* D.I. 22 at 3);

WHEREAS, Magistrate Judge Hall issued a Report and Recommendation, dated June 22, 2021, recommending that if the Court "intends to follow the same reasoning set forth in *Bennett*, Defendant's motion to dismiss should be granted and the complaint should be dismissed with prejudice" (D.I. 23);

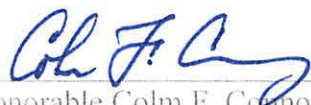
WHEREAS, Plaintiffs object to the Magistrate Judge's recommendation to dismiss this action, but they agree that their objection can and should be overruled if the Court "intends to follow the same reasoning set forth in [the Court's] opinion in *Bennett*" (D.I. 22 at 3);

WHEREAS, the Magistrate Judge had the authority to make her findings and recommendation under 28 U.S.C. § 636(b)(1)(B), and the Court reviews her findings and recommendation *de novo*, § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3); *Brown v. Astrue*, 649 F.3d 193, 195 (3d Cir. 2011);

WHEREAS, the Court concluded that the claims in *Bennett* "fail[ed] as a matter of law because they [were] preempted by federal law," and the Court declined to allow leave to amend, finding that any amendment would be futile, *see* 2021 WL 797834, at \*5;

WHEREAS, Plaintiffs have reserved all rights to timely move for reconsideration pursuant to Federal Rule of Civil Procedure 60 and/or to timely appeal any Order that may be entered based upon the Report and Recommendation (D.I. 22 at 3-4);

**NOW, THEREFORE, IT IS HEREBY ORDERED** that Plaintiffs' objection (D.I. 22) is **OVERRULED**, the Report and Recommendation (D.I. 23) is **ADOPTED**, Teva's motion to dismiss (D.I. 7) is **GRANTED**, and the Complaint is **DISMISSED WITH PREJUDICE**.

  
\_\_\_\_\_  
Honorable Colm F. Connolly  
UNITED STATES DISTRICT JUDGE